

Rajmal Ramnarayan Vs. Budansaheb Adulsaheb

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Court : Mumbai

Decided On : Nov-11-1921

Reported in : (1922)24BOMLR115; 66Ind.Cas.943

Judge : Norman Macleod, Kt., C.J. and Shah, J.

Appeal No. : First Appeal No. 235 of 1920

Appellant : Rajmal Ramnarayan

Respondent : Budansaheb Adulsaheb

Disposition : Appeal allowed

Judgement :

Norman Macleod, Kt., C.J.

1. The plaintiff sued for damages in respect of certain contracts for the purchase and sale of yarn. The contracts were admitted. The only defence that the defendant could take was that the contracts were wagering. The hearing of the case followed rather a peculiar course. On the 3rd February 1920, the suit was placed for hearing and although the parties were present, the plaintiff was not examined by his pleader but was examined for the Court. Also the defendant was examined for the Court on the 15th. Then, although each party had issued summonses to witnesses, none of the witnesses turned up and eventually on the 1st March 1920 the defendant's pleader put in a most remarkable purshis :

There is now no necessity for the defendant to state anything more to the Court than what he has (already) stated to this Court on solemn affirmation. The defendant is not responsible to keep himself in attendance for cross-examination and the suit has not come to that stage, that is to say, that 'stage of procedure.' No steps whatever have been taken heretofore on behalf of the plaintiff for examination of the defendant. The defendant now objects to the grant of time to the plaintiff for that purpose. The burden of proof as regards the first issue is thrown on the defendant. No additional evidence is to be given just now on behalf of the defendant.

2. It was very clear that the onus of proving that the contracts were wagering lay on the defendant. All that was said in his deposition before the Court was that the contracts were of a wagering nature, That of course was not proof of the fact asserted. He would have to show that at the time the contract was entered into, the common intention was not to give and take delivery but to pay differences. The purshis continues:-

The defendant reserves the evidence which he is entitled to give by law by way of rebuttal against the evidence that may be given on behalf of the plaintiff.

3. The defendant also seems to have considered that he was not bound to go into the witness-box to be cross-examined by the plaintiff, but that the only way for the plaintiff to get his evidence was by issuing a summons to the defendant himself. If the defendant did not choose to go into the witness-box on his own behalf, that was a matter for himself to decide, but in an ordinary case, the Court is entitled to consider that as a point against the defendant. Certainly if a defendant says 'I am not going into the witness-box unless I am summoned by the plaintiff' he puts himself in the wrong. For the plaintiff is not bound to issue a summons to the defendant, and unless the defendant gives evidence on his own behalf so as to give the plaintiff an opportunity of cross-examining him, then the Court is entitled to infer everything against the defendant. Thus the defendant has absolutely failed to prove what he was bound to prove, in order to succeed in his defence that the suit transactions were of the nature of wagering contracts. The result must be that the appeal must be allowed and the plaintiff will have a decree for Rs. 18,201-4-0

and costs throughout.

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